

## HOUSE BILL NO. 624

INTRODUCED BY M. MORE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO EDUCATION FUNDING; PROVIDING AN INDIVIDUAL INCOME TAX CREDIT FOR QUALIFYING ELEMENTARY AND SECONDARY EDUCATION EXPENSES PAID BY AN INDIVIDUAL FOR A DEPENDENT MINOR; REQUIRING A DECLARATION OF INTENT TO CLAIM A TAX CREDIT; ESTABLISHING THE MONTANA EXCELLENCE IN TEACHING AWARD PROGRAM; PROVIDING THAT ANB ENTITLEMENT MONEY SAVED THROUGH A TUITION TAX CREDIT BE APPORTIONED AND DISTRIBUTED TO EACH DISTRICT BASED ON ANB FOR AWARDS TO CLASSROOM TEACHERS OR SPECIALISTS SELECTED BY DISTRICT PARENTS; AMENDING SECTIONS 20-9-161, 20-9-162, 20-9-163, 20-9-311, AND 20-9-507, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

WHEREAS, Article X, section 1(1), of the Montana Constitution guarantees equality of educational opportunity to each person of the state; and

WHEREAS, the Legislature finds that allowing lower-income parents the same ability that wealthier parents now have in selecting the school of their choice enhances equality of educational opportunity; and

WHEREAS, the Legislature strongly supports the rights of parents to choose the way in which their children are educated, consistent with their academic expectations and personal values; and

WHEREAS, the Legislature believes that competition in the educational marketplace has a strengthening effect on both public and private education and serves the long-term best interests of all students; and

WHEREAS, the Legislature supports an education policy that fosters the free movement of educational consumers to the schools of their choice; and

WHEREAS, the Legislature finds that parental choices in education can reduce the Montana property and income tax burdens and increase the amount of money available to educate each child in the public schools; and

WHEREAS, the Legislature is aware that teacher pay in Montana constitutes only approximately 37% of the K-12 education budget, while the national average devotes approximately 44% of the K-12 education budget to teacher pay; and

WHEREAS, the Legislature desires that this legislation be revenue-neutral and use the state savings

1 generated by a tuition tax credit to augment teacher or specialist salaries for meritorious performance; and

2 WHEREAS, the Legislature intends, with passage of this bill, to grant all parents more educational choice  
3 and to grant public school parents an increased voice in their local schools.

4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6  
7 **NEW SECTION. Section 1. Elementary and secondary education expense tax credit.** (1) There is  
8 a credit against the taxes otherwise due under this chapter for qualified elementary and secondary education  
9 expenses paid by an individual for a dependent who is a minor during the tax year. In order to claim the credit,  
10 the individual must have a completed intent to claim an education tax credit form on file with the state pursuant  
11 to [section 2].

12 (2) (a) Education expenses that qualify for the credit under this section are amounts paid as tuition and  
13 fees by an individual for a dependent who is in compliance with Title 20, chapter 5, part 1.

14 (b) Qualifying education expenses do not include amounts paid to a governmental entity as property  
15 taxes, assessments, or fees.

16 (3) The amount of the credit for qualifying education expenses is as follows:

17 (a) up to \$375, as applied against the first \$375 of qualifying education expenses, for the tax year  
18 beginning January 1, 2010, but only for the amount by which those expenses have increased from the previous  
19 tax year;

20 (b) up to \$750 for the tax year beginning January 1, 2011, as applied against the first \$375 of qualifying  
21 education expenses for attendance from January 1, 2011, to June 30, 2012, and against the first \$375 of  
22 qualifying education expenses for attendance from July 1, 2011, to December 31, 2012, but only for the amount  
23 by which those expenses have increased from the 2009 tax year; and

24 (c) up to \$1,000 for tax years beginning on or after January 1, 2012.

25 (4) A deduction or credit is not allowed under any other provision of this chapter with respect to any  
26 amount for which a credit is allowed under this section. Any amount of the credit allowed under this section that  
27 is in excess of an individual's tax liability may not be refunded to the individual.

28 (5) In the case of a married individual filing a separate return, the amount of the credit under subsection  
29 (3) is limited to one-half of the applicable amount.

1           **NEW SECTION. Section 2. Intent to claim education tax credit -- form.** (1) The superintendent of

2 public instruction shall provide a form on which to declare the intent to claim an education tax credit. The form  
3 must outline the tax credit provided by [section 1] and must contain an affidavit that the individual completing the  
4 form intends to enroll a dependent minor in a nonpublic school or a public school other than a public school in  
5 the district of residence during the following school year. The form must be distributed to each student attending  
6 public school. Forms must also be provided to and be available from each county superintendent of schools.

7           (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually complete  
8 the form provided for in subsection (1) of this section and return the form to the county superintendent or a trustee  
9 of the individual's district of residence by May 10. Each district shall forward the forms to the county  
10 superintendent, who shall then forward the forms to the superintendent of public instruction. The number of  
11 eligible dependent minors indicated on the forms who were enrolled in a public school during the year in which  
12 the form was filed must be excluded from ANB calculations for the ensuing school year.

13           (3) The superintendent of public instruction shall forward a copy of each form to the department of  
14 revenue for use in determining eligibility for the tax credit provided for in [section 1].

15  
16           **NEW SECTION. Section 3. Montana excellence in teaching award program -- eligibility --**  
17 **distribution of funds.** (1) The board of trustees of each school district may establish a Montana excellence in  
18 teaching award program to allow the parents of each child attending school in the district to select recipients.

19           (2) If a program is established, the trustees shall, by May 1 of each year, institute a voting procedure to  
20 allow the custodial parent or parents one vote for each child attending school in the district to select the teachers  
21 or specialists for the excellence in teaching award. To be eligible for the excellence in teaching award, a teacher  
22 or specialist must be a classroom teacher or specialist and a full-time employee in an accredited school in the  
23 district.

24           (3) For school fiscal years beginning on or after July 1, 2009, the superintendent of public instruction  
25 shall:

26           (a) calculate the total statewide ANB entitlement money saved by the enrollment decrease attributable  
27 to claims submitted pursuant to [section 2];

28           (b) subtract from the total calculated in subsection (3)(a) the amount not collected because of the tax  
29 credit received under [section 1]; and

30           (c) distribute to each district within 2 days of the final direct state aid payment made pursuant to 20-9-344

the district's percentage share of the remaining ANB entitlement based on the district's ANB enrollment.

(4) A district that receives funds pursuant to subsection (3) shall deposit the funds into its miscellaneous programs fund and may use the funds only to pay Montana excellence in teaching award recipients.

(5) From the funds distributed to the district by the superintendent of public instruction pursuant to this section, the district shall pay \$4,000 to each teacher or specialist selected to receive a Montana excellence in teaching award.

(6) If funds allocated to the district are not adequate to provide a \$4,000 payment to each recipient, the district shall distribute payments in \$4,000 increments based on the ranking of teachers or specialists as determined by the parental vote, and any money remaining that is insufficient to award a full \$4,000 payment must be paid to the next highest ranking recipient on the list.

(7) A Montana excellence in teaching award may not be included in the calculation of same salary as defined in 20-4-203.

**Section 4.** Section 20-9-161, MCA, is amended to read:

**"20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is:

(a) beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year; or

(b) because of enrollment of students for whom a form to declare the intent to claim an education tax credit was filed as provided in [section 2];

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an

1 additional financial obligation on the district;

2 (5) the receipt of:

3 (a) a settlement of taxes protested in a prior school fiscal year;

4 (b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its  
5 agents;

6 (c) delinquent taxes from a prior school fiscal year; and

7 (d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received  
8 under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the  
9 district; or

10 (6) any other unforeseen need of the district that cannot be postponed until the next school year without  
11 dire consequences affecting the safety of the students and district employees or the educational functions of the  
12 district."

13  
14 **Section 5.** Section 20-9-162, MCA, is amended to read:

15 **"20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions of  
16 subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that  
17 a budget amendment required by an enrollment increase as provided in 20-9-161(1)(a) may not be adopted until  
18 after October 1.

19 (b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a resolution.

20 (c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim  
21 the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts  
22 constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated  
23 source of financing, the estimated amount of money required to finance the budget amendment, and the time and  
24 place the trustees will meet for the purpose of considering and adopting the budget amendment for the current  
25 school fiscal year.

26 (2) The trustees shall send a copy of the proclamation to the county superintendent and to the board of  
27 county commissioners of the county.

28 (3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent of  
29 public instruction for approval in the manner provided in 20-9-163."

1           **Section 6.** Section 20-9-163, MCA, is amended to read:

2           **"20-9-163. Resolution for budget amendment -- petition to superintendent of public instruction.**

3       (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment  
4       increase, they may petition the superintendent of public instruction to adopt a resolution for the budget  
5       amendment. The petition must be signed by a majority of the trustees.

6       (2) The petition must state the facts constituting the need for the budget amendment, the estimated  
7       amount of money required to fund the budget amendment, the funds affected by the budget amendment, the  
8       anticipated source of financing for the budget amendment, and the current year enrollment.

9       (3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting  
10      approval to adopt a resolution for a budget amendment because of increased enrollment. The superintendent  
11      of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment  
12      increase. If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)(a), the  
13      superintendent of public instruction shall adjust the district's maximum general fund budget based on the  
14      approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will  
15      cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the  
16      trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a  
17      budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of  
18      trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of  
19      complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as  
20      approval of any subsequent application for increased state aid on account of the budget amendment."

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22           **Section 7.** Section 20-9-311, MCA, is amended to read:

23           **"20-9-311. Calculation of average number belonging (ANB) -- three-year averaging.** (1) Average  
24      number belonging (ANB) must be computed for each budget unit as follows:

25           (a) compute an average enrollment by:

26           (i) adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October  
27      of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year,  
28      or the next school day if those dates do not fall on a school day; ~~and;~~

29           (ii) divide the sum by two; and

30           (iii) subtract the number of students who were enrolled during the prior school fiscal year as indicated

1 on the forms provided in [section 2]; and

2 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved  
3 pupil-instruction-related days for the current school fiscal year and divide by 180.

4 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related  
5 days may be included in the calculation.

6 (3) When a school district has approval to operate less than the minimum aggregate hours under  
7 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

8 (4) (a) For the purpose of calculating ANB, enrollment in an education program:

9 (i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time  
10 enrollment;

11 (ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time  
12 enrollment;

13 (iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time  
14 enrollment; and

15 (iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

16 (b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per  
17 school year may not be included for purposes of ANB.

18 (c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on  
19 the hours necessary and appropriate to provide the course within a regular classroom schedule.

20 (d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school,  
21 program, or district may not be counted as more than one full-time pupil for ANB purposes.

22 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state  
23 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose  
24 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the  
25 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten  
26 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for  
27 districts offering full-time kindergarten.

28 (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days,  
29 the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes  
30 attendance prior to the day of the enrollment count.

(7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that the ANB is calculated as a separate budget unit when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be



1 considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high  
2 school pupils for ANB purposes; or

3 (d) a school has not been accredited by the board of public education, the regularly enrolled, full-time  
4 pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes,  
5 nor will an average number belonging for the nonaccredited school be used in determining the BASE funding  
6 program for the district.

7 (9) The district shall provide the superintendent of public instruction with semiannual reports of school  
8 attendance, absence, and enrollment for regularly enrolled students, using a format determined by the  
9 superintendent.

10 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program  
11 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes  
12 only if the pupil is offered access to the complete range of educational services for the basic education program  
13 required by the accreditation standards adopted by the board of public education.

14 (b) Access to school programs and services for a student placed by the trustees in a private program  
15 for special education may be limited to the programs and services specified in an approved individual education  
16 plan supervised by the district.

17 (c) Access to school programs and services for a student who is incarcerated in a facility, other than a  
18 youth detention center, may be limited to the programs and services provided by the district at district expense  
19 under an agreement with the incarcerating facility.

20 (d) This subsection (10) may not be construed to require a school district to offer access to activities  
21 governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a  
22 pupil who is not otherwise eligible under the rules of the organization.

23 (11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this  
24 title and who is:

25 (a) a resident of the district or a nonresident student admitted by trustees under a student attendance  
26 agreement and who is attending a school of the district;

27 (b) unable to attend school due to a medical reason certified by a medical doctor and receiving  
28 individualized educational services supervised by the district, at district expense, at a home or facility that does  
29 not offer an educational program;

30 (c) unable to attend school due to the student's incarceration in a facility, other than a youth detention

center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) and then combined.

(13) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (13)(a) by three."

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2       **Section 8.** Section 20-9-507, MCA, is amended to read:

3       **"20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local,  
4 state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as  
5 provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall  
6 establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of  
7 miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, the transfer  
8 of a fund balance from a tuition fund closed under 20-9-201, a distribution of funds for recipients of the Montana  
9 excellence in teaching award established pursuant to [section 3], or a grant of money for the financing of  
10 expenditures to be realized by the district for a special, approved program to be operated by the district. When  
11 the money is a reimbursement, the transfer of a tuition fund balance, or a local government severance tax  
12 payment, the money may be expended at the discretion of the trustees for school purposes. When the money  
13 is a grant, the money must be expended according to the conditions of the program approval by the  
14 superintendent of public instruction or any other approval agent. When the money is distributed for payment to  
15 recipients of the Montana excellence in teaching award, the money must be expended pursuant to the provisions  
16 of [section 3]. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each  
17 local, state, or federal grant project, funds transferred from a closed tuition fund, ~~and~~ the indirect cost recoveries,  
18 and the Montana excellence in teaching award program established pursuant to [section 3].

19       (2) The financial administration of the miscellaneous programs fund must be in accordance with the  
20 financial administration provisions of this title for a nonbudgeted fund."  
21

22       **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an  
23 integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

24       (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the  
25 provisions of Title 20, chapter 3, part 1, apply to [section 2].

26       (3) [Section 3] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the  
27 provisions of Title 20, chapter 3, part 3, apply to [section 3].  
28

29       **NEW SECTION. Section 10. Retroactive applicability.** [This act] applies retroactively, within the  
30 meaning of 1-2-109, to tax years beginning after December 31, 2008.

31                               - END -